

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

VAUGHN RAMONE GROVE,

Movant

v.

CIVIL ACTION NO. 2:12-1031
(Criminal No. 2:09-00263-01)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is the movant's motion to alter or amend judgment, filed June 17, 2013.

On January 30, 2013, the then-presiding magistrate judge filed her PF&R recommending that the court deny a section 2255 motion filed by movant. On February 26, 2013, the court received movant's untimely "OBJECTIONS TO PROPOSED FINDINGS & RECOMMENDATIONS" by regular mail, along with a motion to extend the time for filing objections for a period of 30 days. The court granted the motion to extend. On March 14, 2013, the Judgment was entered denying the movant's section 2255 motion. The movant appealed the Judgment but the appeal was dismissed on April 3, 2013, for failure to prosecute.

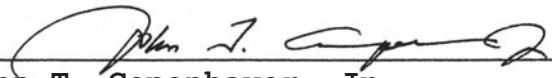
Movant presently appears to assert that the state statute under which he was convicted for a predicate crime resulting in his career offender treatment in this federal criminal prosecution contemplates only an assault through the actual use of violence and should not have been counted. As noted by the magistrate judge in the earlier adopted proposed findings and recommendation, however, movant "actually physically struck several correctional officers in the incident that led to his [predicate] charge of conviction, causing a nasal fracture and lacerations above one of the staff member's eyes." (PF&R at 8).

Accordingly, it appears that the movant actually used violence in the course of committing the predicate offense. His assertion that violence was not involved is thus not meritorious. Whether the motion to alter or amend judgment is treated as having been made pursuant to Federal Rules of Civil Procedure 59(e) or 60, movant has not demonstrated his entitlement to relief thereunder.

The court ORDERS that the motion to alter or amend judgment be, and hereby is, denied.

The Clerk is directed to forward copies of this written opinion and order to the movant and all counsel of record.

DATED: July 2, 2013



John T. Copenhaver, Jr.
United States District Judge